

REMARKS

This is in response to the Office Action mailed July 2, 2009.

The Examiner has objected to claims 1, 3-11, 13 to 23 and 30 on the basis that the claims are not directed to patentable subject matter.

Applicant has canceled claims 11, 13 to 23 and 30. Applicant respectfully submits that claims 1, 3-10 meet the requirements of 35 U.S.C. for the reasons that follow.

As set out in *In re Bilski*, a method or process must be tied to a particular machine or transforms an article into a different state or thing. The pending claims are directed to providing music from a provider of music to an operator and in the course of carrying out the method of the claims, rights are transferred from an operator to a provider of music, and music is delivered from the provider to the operator. As a result, music which may otherwise be maintained by a provider of music is physically played in a public medium. Applicant submits that this transformation meets the requirements for patentability required.

The Examiner takes the position that the step of "playing said selection in said public medium" is an insignificant extra-solution activity. Applicant respectfully disagrees. The invention is premised on the playing of music in a public medium in order for the provider of the music to achieve public exposure of its music. The playing of music in a public medium is critical in the achievement of the commercial and public benefit of the invention. Accordingly, this step is clearly not merely an insignificant extra-solution activity. Applicant respectfully requests the withdrawal of this objection.

The Examiner has objected to claims 1-23 and 30 as being unpatentable over Wilks in view of Ishii.

The present invention is a method for conducting a transaction between an operator of a public medium and a provider of music. The method involves the transfer of the right to play music in the operator's publicly accessible medium to a provider of music. The music can be in any of a number of different formats including recorded music, live simulcast musical audio and audio-visual content. The provider of music is entitled to the public performance of such music within the owner's medium. The method allows the provider of music to achieve a promotion value in exposing the public to its musical products and artists while permitting the owner of the public space to avoid the costly and often inefficient methods of obtaining music that currently exist in the art.

As previously submitted, Wilks does not address, nor teach, the transfer of rights between a provider of music and an operator as required in the pending claims. Applicant submits that Wilks does not teach the provider acquiring from the operator a right to play music. In Wilks, the system is disclosed where "the selection by a business owner" [para 8] is taught and the business pays the necessary license fees [para 48].

Applicant submits that Ishii does not remedy the deficiencies of Wilks. Ishii discloses that music data to be advertised can be uploaded and distributed to mobile communication terminal devices of certain target groups. If a target group recipient chooses to download the music data to be advertised, a discount is available. However, Ishii does not teach the active step of playing music in a public medium. Furthermore, no right to play a selection of music in a public medium is transferred from an operator of a public medium to a provider of music is disclosed by Ishii. The combination of Wilks and Ishii therefore does teach a method that allows the provider of music to achieve a promotion value in exposing the public to its musical products and artists while permitting the owner of the public space to avoid the costly and often inefficient methods of obtaining music that currently exist in the art.

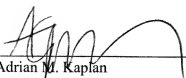
It is therefore respectfully submitted that the present invention patentably distinguishes over Wilks and Ishii.

Favourable consideration and allowance of this application are respectfully requested.

A Petition for an Extension of Time requesting an extension of three months for filing the subject response is attached. The Commissioner is authorized to charge any deficiency or credit any overpayment in the fees for same to our Deposit Account No. 500663.

Executed at Toronto, Ontario, Canada, on January 4, 2010.

Leonard J. Gaik



Adrian M. Kaplan

Registration No. 43396

(416) 971-7202, Ext. 313

Customer Number: 38735